

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
Central Division

In re:	)	Bankr. No. 98-30068
	)	
CHARLES J. SNYDER	)	Chapter 7
Soc. Sec. No. 504-86-0013	)	
Debtor.	)	
	)	
JANET C. SNYDER	)	Adv. No. 98-3016
Plaintiff,	)	
	)	MEMORANDUM OF DECISION
-vs-	)	RE: PLAINTIFF'S NON
	)	DISCHARGEABILITY COMPLAINT
CHARLES J. SNYDER	)	
Defendant.	)	

The matter before the Court is Plaintiff Janet C. Snyder's non dischargeability complaint regarding certain funds Defendant-Debtor Charles J. Snyder was ordered to pay during their divorce action. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum of Decision and accompanying order and judgment constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that the subject debt is non dischargeable under 11 U.S.C. § 523(a)(5).

I.

Janet E. Snyder (Janet) filed for divorce from Charles J. Snyder (Charles) in 1995. During the course of the proceeding, Charles was ordered to pay Janet, who was 100% disabled, spousal support of \$300.00 per month while the divorce was pending and \$500.00 in attorneys' fees. Charles paid little of the ordered support and attorneys' fees despite several enforcement attempts.

An essentially default divorce judgment and decree was entered

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August 13, 1997. Pursuant to the decree, Janet and Charles each took personalty in their possession and certain debts were divided. At the time of the divorce, Charles was in arrears \$9,400.00 for the interim spousal support and attorneys' fees.

Charles commenced a Chapter 7 petition in bankruptcy on June 4, 1998. Included on his schedule of unsecured priority debts was the \$9,400.00 owed Janet and her attorney for the interim spousal support and attorneys' fees.

Janet commenced this non dischargeability action regarding the \$9,400.00 on September 8, 1998. Subject to that complaint, a general discharge was entered September 9, 1998.

In her amended complaint,<sup>1</sup> Janet sought a judgment declaring her claim of \$9,400.00 non dischargeable under 11 U.S.C. § 523(a)(5). Charles answered that the debt instead was a divorce-related property debt under § 523(a)(15) because it was not incorporated into the final divorce decree and judgment, because it was only for interim support, and because he eventually got more property than Janet. Charles did not specifically state which exception under (a)(15) applied to him so as to render the debt dischargeable.

At trial, counsel spent some time arguing whether the

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<sup>1</sup> Plaintiff filed an amended complaint to address some deficiencies in the original. After some confusion on whether Plaintiff had properly served a summons, the Clerk issued a new summons with an erroneous answer deadline.

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\$9,4000.00 fell under § 523(a)(5) or § 523(a)(15). Both parties testified about their present and foreseeable futures. They both now have very limited incomes and commensurate expenses. Janet is still 100% disabled and is not expected to ever work again. She has no children at home, lives with her mother (paying her mother rent), and continues treatment for her health problems. Presently, Charles also is disabled. He receives workers' compensation and will return to some sort of work when his health improves and after he receives re-training. He supports two minor children and does not receive any child support for them.

At the conclusion of the trial, Charles' counsel was given an opportunity to review and respond to some medical evidence offered by Janet. That opportunity was later declined and the matter was taken under advisement.

## II.

Under 11 U.S.C. § 523(a)(5), a debtor in a Chapter 7 case does not receive a discharge of debts to a spouse, former spouse, or child for alimony, maintenance, or support in connection with a separation agreement, divorce decree, or other order of a court of record. The spouse, former spouse, or child, by a preponderance of the evidence, has the burden to show that the debt falls within the limits of § 523(a)(5). *Grogan v. Garner*, 498 U.S. 279, 286-90 (1991). It is a question of federal law. *Tatge v. Tatge (In re Tatge)*, 212 B.R. 604, 608 (8<sup>th</sup> Cir. B.A.P. 1997). The Court must

consider the question in light of all facts and circumstances relevant to the intent of the parties at the time the obligation was created. *Cummings v. Cummings (In re Cummings)*, 147 B.R. 747, 750 (Bankr. D.S.D. 1992) (citing *William v. Williams (In re Williams)*, 703 F.2d 1055, 1058 (8th Cir. 1983)). The crucial issues are the intent of the parties and the function the award was to serve. *Tatge*, 212 B.R. at 608. Although statutory exceptions to discharge are subject to narrow construction, exceptions from discharge for familial support receive a more liberal construction. *Holliday v. Kline (In re Kline)*, 65 F.3d 749, 750-51 (8th Cir. 1995) (citing *Werner v. Hofmann*, 5 F.3d 1170, 1172 (8th Cir. 1993), and *Shine v. Shine*, 802 F.2d 583, 585 (1st Cir. 1986)).

Attorneys' fees payable to or on behalf of a spouse or former spouse of a debtor are also non dischargeable under § 523(a)(5). *Kline*, 65 F.3d at 751. The question is whether they too are in the nature of support. *Id.*

### III.

The record from the divorce court proceeding clearly shows that the interim support and attorneys' fee that Charles was ordered to pay to or on behalf of Janet were for her support or maintenance. The support order entered June 27, 1995 can leave no other conclusion, especially in light of Janet's total disability at the time.

Contrary to Charles' argument, the support order did not need


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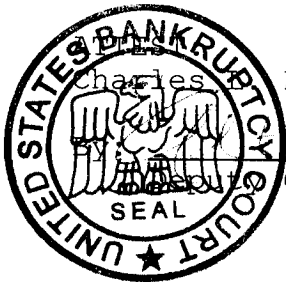
to be incorporated into the final divorce decree to be non dischargeable. It is a distinction without a difference. Section 523(a)(5) encompasses all court orders regarding support, not just those specifically entered as part of a formal separation order or divorce decree. Further, the interim support order was not supplanted by the divorce decree. The state court continued to enforce it even after the divorce decree was entered, as shown by the wage withholding order entered November 19, 1997. Finally, there was absolutely no evidence presented that the interim support and attorneys' fees were in substitution of property that was later divided.

A judgment shall be entered for Plaintiff under § 523(a)(5) declaring non dischargeable her claim against Defendant-Debtor for \$9,400.00 in interim support and attorneys' fees.

So ordered this 16 day of March, 1999.

BY THE COURT:

  
Irvin N. Hoyt  
Bankruptcy Judge



Charles L. Nail, Jr., Clerk

Clerk  
(SEAL)

NOTICE OF ENTRY  
Under F.R.Bankr.P. 9022(a)  
Entered

MAR 16 1999

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court  
District of South Dakota

I hereby certify that a copy of this document  
was mailed, hand delivered, or faxed this date  
to the parties on the attached service list.

MAR 16 1999

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court, District of South Dakota  
By AC

Case: 98-03016 Form id: 122 Ntc Date: 03/16/1999 Off: 3 Page : 1  
Total notices mailed: 3

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